

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

THERMASTEEL SYSTEMS)	
SOUTHEAST, LLC, d/b/a)	
Thermagreen Steel Structures,)	
LLC, an Alabama limited)	
liability company,)	
)	
Plaintiff,)	
)	
vs.)	Case No.: 2:10-cv-01205-JEO
)	
THEODORE BAKER, an)	
individual, and THERMAGREEN)	
STEEL STRUCTURES, LLC, a)	
Delaware limited liability company,)	
)	
Defendants.)	

MEMORANDUM OPINION

The above-styled cause is an action for trademark infringement brought by the plaintiff, Thermasteel Systems Southeast, LLC, d/b/a Thermagreen Steel Structures, LLC, (an Alabama limited liability company) against defendants, Theodore Baker and Thermagreen Steel Structures, LLC (a Delaware limited liability company) (hereinafter “Defendants”). Defendants have failed to appear or respond to the Summons and Complaint. The Clerk entered a default against defendants on September 30, 2010. (Doc. 13). Plaintiffs moved for a default judgment against defendants on October 26, 2010. (Doc. 14).

On November 15, 2010, a hearing was held in which the court heard testimony by Kathy Mathews, Chief Executive Officer for plaintiff. Ms. Mathews presented the following facts in her testimony: (1) that plaintiff was established in January 2007 as a manufacturer of structural insulated panels (“SIP’s”), which are used to construct low cost and energy efficient housing worldwide; (2) the SIP’s manufactured and marketed by plaintiff are produced in a limited industry with other manufacturers located in Alabama, Virginia, Alaska, and Russia; (3) upon its establishment, defendant Theodore Baker owned a ten percent interest in plaintiff; (4) plaintiff redeemed Mr. Baker’s ownership interest in full on September 5, 2008 and informed Mr. Baker that he was no longer authorized to represent plaintiff or act on the company’s behalf; (5) on September 9, 2008, Mr. Baker formed ThermaGreen Steel Structures, LLC, a Delaware limited liability company; (6) plaintiff acquired a trademark for “ThermaGreen” on July 28, 2009; (7) Mr. Baker has continued using the ThermaGreen mark for his Delaware limited liability company, causing confusion in the marketplace.

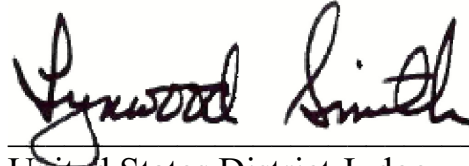
On November 16, 2010, the Magistrate Judge entered his Report and Recommendation, recommending that Plaintiff’s motion for default judgment be granted in part, with the remainder to be continued for further proceedings. (Docs. 15, 14, respectively). The Report and Recommendation required any specific written

objections to be filed within fourteen (14) days of the date the same was entered. No party has filed any objection.

The court has carefully considered the record in this case, together with the Magistrate Judge's Report and Recommendation, and has reached an independent conclusion that the Report and Recommendation is due to be adopted and approved. Accordingly, defendants will be enjoined from using the ThermaGreen mark, or a confusingly similar variant thereof, and from otherwise infringing plaintiff's rights to the ThermaGreen mark, including the right to sell and offer for sale products bearing the ThermaGreen mark. Defendants will further be ordered to deliver for destruction, within thirty (30) days of the date of the court's order, all printed materials within their possession that contain the ThermaGreen mark or a confusingly similar variant thereof. Defendants will also be ordered, within thirty (30) days of the date of the court's order, to file with the court documentation listing the manner of their compliance with said order. Finally, defendants will be ordered, within thirty (30) days of the date of the court's order, to submit to an accounting of all profits acquired during defendants' use of the ThermaGreen mark. The parties will be ordered to notify the court when said accounting has concluded.

An appropriate Order will be entered contemporaneously herewith.

DONE this 27th day of September, 2011.

A handwritten signature in black ink, reading "Lynwood Smith". The signature is written in a cursive style with a large, looping initial "L".

United States District Judge